

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

HOBART CORPORATION, <i>et al.</i> ,) CASE NO. 3:12-cv-00213-WHR
)
Plaintiffs,) JUDGE WALTER H. RICE
)
v.) [ORAL ARGUMENT REQUESTED]
)
COCA-COLA ENTERPRISES, INC., <i>et al.</i> ,) DEFENDANTS' MOTION TO
) DISMISS PLAINTIFFS'
Defendants.) COMPLAINT

Defendants, GlaxoSmithKline LLC, incorrectly named in the Complaint as GlaxoSmithKline, L.L.C., DAP Products Inc., incorrectly named in the Complaint as DAP Products, Inc., Coca-Cola Enterprises Inc., incorrectly named in the Complaint as Coca-Cola Enterprises, Inc.¹ and The Sherwin-Williams Company (collectively, "Defendants"), hereby move the Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for an Order dismissing Plaintiffs' Complaint, with prejudice, in the above captioned matter. As is more fully set forth in the attached Memorandum in Support, which is incorporated herein by reference, the Complaint fails to state any claim upon which relief may be granted.

The Complaint alleges four causes of action – for recovery under two sections of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.*, as amended ("CERCLA"), for unjust enrichment, and for a declaration under CERCLA, all of which are based on Plaintiffs' entry into an administrative settlement and

¹ GlaxoSmithKline LLC, DAP Products Inc. and Coca-Cola Enterprises Inc. respectfully request that the Court direct the Clerk to correct the docket to reflect their proper legal names. GlaxoSmithKline LLC and DAP Products Inc. also dispute Plaintiffs' successor liability allegations, but that issue is outside the scope of this Motion. Counsel for Coca-Cola Enterprises Inc. has advised Plaintiffs' counsel that the correct corporate entity doing business in the United States is Coca-Cola Refreshments USA, Inc.

consent order with the United States Environmental Protection Agency. Even taking the allegations in the Complaint as true, however, Plaintiffs have failed to plead a viable cause of action. Plaintiffs were entitled to assert only one of their two CERCLA claims, and the time to assert that claim has long passed. Moreover, Plaintiffs are not entitled to common law unjust enrichment or for declaratory relief under CERCLA. For all of these reasons, the Complaint does not state a valid cause of action against any of the Defendants, and should be dismissed.

Dated: August 15, 2012

Respectfully submitted,

/s/ William E. Coughlin

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2012, the foregoing **DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT**, with attached Memorandum in Support, was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ William E. Coughlin
One of the Attorneys for Defendant